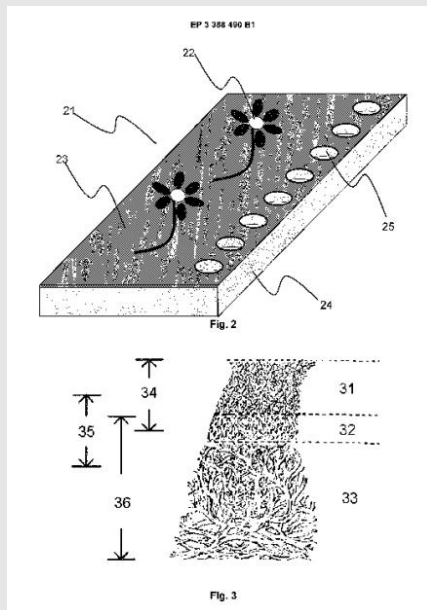


**UPC CFI, Local Division Hamburg, 9 August 2024,
AGFA v Gucci**



Decorating natural leather

PATENT LAW – PROCEDURAL LAW

Confidentiality club protection for trade secrets and confidential information, restricting use or disclosure outside of the present court proceedings. (Rule 262A RoP, Article 9 Trade Secrets Directive)

- The existence of a trade secret does not have to be established to the court's satisfaction, but it is sufficient if this is predominantly probable.
- The following information relating to the internal organization, the supply chain and sales data of the Gucci group are classified as confidential pursuant to R. 262A RoP:

Restricting the use of confidential instead of limiting access thereto,

- does not endanger the right of the other party right to be heard and the right to argue its case successfully and does not require the same strict balancing of interest as a limitation of access within the proceedings.

When balancing the interests of the parties, a distinction, as a starting point, has to be made between applications under [R. 262](#) on the one hand and [R. 262A RoP](#) on the other. Confidentiality applications under [R.262A RoP](#) concern confidentiality vis-à-vis the party to the proceedings, while applications under [R. 262](#) concern confidentiality vis-à-vis third parties not involved in the proceedings, [R. 262.1 \(b\) and .3 RoP](#). With regard to [R. 262A RoP](#) applications the other party's right to be heard and the right to argue its case successfully before the Court are at stake. However, in cases – like the present – where the party applying for confidentiality does not seek to limit the access to the confidential information to a limited number of natural persons, but aims at restricting the use of the confidential information

included in the Defendant's pleadings to be used for the purposes of the present proceedings, but not outside the proceedings, only, these rights of the other party are not endangered. This situation is closer to an application under [R. 262.2 RoP](#) as the use outside of the present proceeding is the essence of such an [R.262A](#) application. To limit only further use of the said information does not require the same strict balancing of interest as a limitation of access within the proceedings. A request for confidentiality for any use outside of the proceedings is therefore not only reasoned when the characterisation as a trade secret is predominantly probable, but when it is probable to a lesser extent. As the right of the other party to be heard is not inflicted any overly strict handling of confidentiality requests regarding post- or outside trial use can lead to a limitation of a party's ability to defend and explain itself and to present evidence.

Source: [Unified Patent Court](#)

**UPC Court of First Instance,
Local Division Hamburg, 9 August 2024
(Schilling)**

UPC_CFI_278/2023

Procedural Order

of the Court of First Instance of the Unified Patent Court delivered on 09/08/2024

APPLICANT/S

- 1. Guccio Gucci S.p.A.** (Defendant) - Via Tornabuoni 73/r - 50123 - Florence - IT
Statement of claim served on 19/09/2023
Represented by Benjamin Schröder
- 2. Marbella Pellami S.p.A.** (Defendant) - Via Marco Polo 91 - 56031 - Bientina - IT
Statement of claim served on 19/09/2023
Represented by Benjamin Schröder
- 3. G Commerce Europe S.p.A.** (Defendant) - Via Don Lorenzo Perosi 6 - 50018 - Scandicci - IT
Statement of claim served on 19/09/2023
Represented by Benjamin Schröder
- 4. Gucci Logistica S.p.A.** (Defendant) - Via Don Lorenzo Perosi 6 - 50018 - Scandicci - IT
Statement of claim served on 19/09/2023
Represented by Benjamin Schröder
- 5. GG Luxury Goods GmbH** (Defendant) - Unter den Linden 21 - 10117 - Berlin - DE
Statement of claim served on 09/09/2023
Represented by Benjamin Schröder
- 6. Gucci France SAS** (Defendant) - 7 Rue Leonce Reynaud - 75116 - Paris - FR
Statement of claim served on 19/09/2023
Represented by Benjamin Schröder
- 7. GG FRANCE SERVICES SAS** (Defendant) - 37 Rue de Bellechase - 75007 - Paris - FR
Statement of Statement of claim served on 19/09/2023
Represented by Benjamin Schröder
- 8. Gucci Belgium SA** (Defendant) - Boulevard de Waterloo 49 - 1000 - Bruxelles - BE
Statement of claim served on 13/09/2023

Represented by Benjamin Schröer

9. Gucci Sweden AB (Defendant) - Birger Jarlsgatan 1
- 11145 - Stockholm - SE

Statement of claim served on 19/09/2023

Represented by Benjamin Schröer

CLAIMANT

AGFA NV (Claimant) - Septestraat 27 - 2640 - Mortsel
- BE

Represented by Kai Rütting

PATENT AT ISSUE

Patent no. Proprietor/s

EP3388490 AGFA NV

DECIDING JUDGE

Judge-rapporteur Dr. Schilling

LANGUAGE OF PROCEEDINGS:

English

SUBJECT-MATTER OF THE PROCEEDINGS:

Infringement Action

MOTIONS OF THE PARTIES:

With submission dated June 28th the Defendants 1) to 9) jointly requested to protect confidential information submitted with the Statement of defence and the Rejoinder to the Reply to the Statement of defence relating inter alia to the supply chain of the group of the defendants' which may constitute trade secrets. In accordance with [R. 262A.3 RoP](#) a copy of the Rejoinder to the Reply to the Statement of defence was submitted, wherein the confidential information is redacted.

They state that the information indicated in item 1) is to be classified as confidential. Said information constitutes trade secrets for the protection of which it is imperative to order measures as requested. The concerned information relates to the internal organization of the Gucci group and its suppliers, particularly to sensible sales data and the supply chain of the Gucci group. This information has a commercial value since it shows how the Gucci group organizes its supply chain and the supplier it uses for the manufacturing of its luxury products. It is not generally known and is not available to third parties. Hence, there is a legitimate interest on the part of the Defendants in keeping the information secret. The applicable statutory provision for the requested order is [R. 262A.1 RoP](#), [Art. 58 UPCA](#); it is not requested that the access is restricted to specific persons but that the confidential information must not be used for purposes outside of the present proceedings.

According to [R. 262A.4 RoP](#), the representative of the other party was invited by Court order dated July 2nd to submit a written statement before a final order is issued. With the Court's preliminary order access to the confidential version of the Rejoinder to the reply to the Statement of defence dated 28 June 2024 and the confidential versions of exhibits was restricted to the Claimant's representative personally until a final confidentiality order is issued. In the meantime, the plaintiff's representative was also bound to secrecy vis-à-vis the Claimant with regard to the information contained only in the confidential versions of the aforementioned documents.

The Claimant responded and objected that all information the Defendants seek confidentiality protection for could be considered a trade secret. It did not object to the [R. 262A RoP](#) application with regard to para. 204-209 concerning the alleged pigment mix of the base coats used in a selection of products, the information contained in exhibit HL57 regarding the base coat recipes of the products. But, the Claimant objected mainly that quality control measures of leather skins at Gucci, raw material specifications, the handling of orders and comparison of a production lot to a master could be seen as trade secrets. The Claimant also objected the desired protection of mere file names, references to exhibits or company names involved or not involved in the production process. Furthermore, the Claimant contested the desired protection for written testimonies in general.

REASONS FOR THE ORDER:

1.

The application is admissible. [Article 9\(1\) and \(2\), subparagraph 2\(a\) of Directive \(EU\) 2016/943](#) provides that in judicial proceedings access to documents submitted by the parties or third parties containing business secrets or alleged business secrets may be restricted, in whole or in part, to a limited number of persons upon request. The protection of confidential information is provided for in the UPCA in [Art. 58](#) and implemented in the UPC Rules of Procedure in [R. 262A](#). The requirements for the application pursuant to [R. 262A.2 and .3](#) of the Rules of Procedure are met. The court has invited the representative of the other party to comment in accordance with [R. 262A.4](#) of the Rules of Procedure; the latter has also made use of this opportunity.

2.

The application is to be granted. The reasons given by the applicant for the order significantly outweigh the interest of the other party in unrestricted access to the information or evidence in question after or outside of the present proceedings, in particular since the Defendants have chosen not to request for an access restriction to specific persons.

a)

As the Claimant did not object to the [R. 262A RoP](#) application with regard to para. 204-209 concerning the alleged pigment mix of the base coats used in a selection of products and the information contained in exhibit HL57 regarding the base coat recipes of the products, the Court is convinced that these pieces of information contain a trade secret with the certainty required for a confidentiality application under [R. 262A RoP](#) and that the interest of the Defendants' outweigh the interest of the Claimant in unlimited access.

b)

The Defendants can successfully argue that the information on the technical aspects of the internal quality control thresholds, details of the supply chain and manufacturing tools are part of a trade secret.

aa)

The existence of a trade secret does not have to be established to the court's satisfaction, but it is sufficient

if this is predominantly probable, as shown by the wording in [Art. 9 \(1\) and \(2\) \(a\) of Directive \(EU\) 2016/943](#), which alternatively refers to "alleged trade secrets". [Art. 58 UPCA](#) also refers to the possibility of ordering protective measures "for the protection of trade secrets, personal data or other confidential information of a party to the proceedings" and thus provides an extended scope of protectable information.

bb)

When balancing the interests of the parties, a distinction, as a starting point, has to be made between applications under [R. 262](#) on the one hand and [R. 262A RoP](#) on the other. Confidentiality applications under [R.262A RoP](#) concern confidentiality vis-à-vis the party to the proceedings, while applications under [R. 262](#) concern confidentiality vis-à-vis third parties not involved in the proceedings, [R. 262.1 \(b\) and .3 RoP](#). With regard to [R. 262A RoP](#) applications the other party's right to be heard and the right to argue its case successfully before the Court are at stake. However, in cases – like the present – where the party applying for confidentiality does not seek to limit the access to the confidential information to a limited number of natural persons, but aims at restricting the use of the confidential information included in the Defendant's pleadings to be used for the purposes of the present proceedings, but not outside the proceedings, only, these rights of the other party are not endangered. This situation is closer to an application under [R. 262.2 RoP](#) as the use outside of the present proceeding is the essence of such an [R.262A](#) application. To limit only further use of the said information does not require the same strict balancing of interest as a limitation of access within the proceedings. A request for confidentiality for any use outside of the proceedings is therefore not only reasoned when the characterisation as a trade secret is predominantly probable, but when it is probable to a lesser extent. As the right of the other party to be heard is not infringed any overly strict handling of confidentiality requests regarding post- or outside trial use can lead to a limitation of a party's ability to defend and explain itself and to present evidence.

cc)

With this mind, the Court is sufficiently convinced that quality control thresholds, details of the supply chain and manufacturing tools can be considered a trade secret as it allows conclusions regarding the quality of their products. The Defendants rightfully argue that the information – at least in the aggregate – discloses the whole supply chain and the key manufacturing steps for luxury leather products within the Gucci group, including internal codes whose significance is not known to the public. They declared that the specific roles, functions and interactions of the entities involved in manufacturing Gucci's leather products – both within and outside the Gucci group – are not public knowledge. Therefore, the Defendants have a legitimate right and interest that its internal structure and operations are not used or disclosed outside the present proceedings by the Claimant.

It is not apparent to the Court that the exact, product-specific design of the production of treated leather, the printing technologies and machines used and its setting, was generally known in the present case. Even though the Defendants might use machines openly available on the market, this fact does not exclude the potential and specific settings of these machines from at least probably being trade secrets. At least, the aggregation of the various information together with the information about the machines used and the companies involved or not involved could probably be trade secrets.

dd)

In this light the Court sees not reasons not the treat written testimonies and the name of the witnesses as confidential outside the present proceedings (para 213 or 331 or 370 of the Rejoinder, e.g.).

ee)

The Claimant rightfully questions that the application covers mere file numbers or references to exhibits. To the understanding of the Court these greyed-out references, e.g. para. 224 of the Rejoinder, do not itself establish and are not part of the confidentiality application, but a mere indicator that the greyed-out target, e.g. an exhibit, contains a trade secret and that its content shall be part of the confidentiality system.

c)

The Claimant has not argued that the requested confidentiality order would unduly impair its possibility of effective legal action. It cannot be established that the Claimant's interest in a permanent use of the said information would significantly outweigh the Defendants' interest in limiting the access to the information or evidence in question outside of this proceeding. The only burden the Claimant has to bear is to bind its personnel to the out- of-court use of the greyed-out information.

d)

The application further covers greyed-out portions of the Statement of defence filed January 8th mainly regarding the technical characteristics of the Prior Use Products (para. 509 of the Statement of defence), their manufacturing process (para. 519) and the supply chain (para. 536). The Defendants filed in the Statement of defence for an [R.262.2 RoP](#) confidentiality with regard to third parties, but not with regard to the Claimant, which would require a [R.262A](#) application. Therefore, access of the Claimant was not requested to be limited at that point. Whereas this raises the question whether the Defendants now, seven months later, can claim confidentiality with regard to the Claimant. However, as the Defendants are with the present application not asking for an access limitation, but for a mere use-limitation (out-of-court use), and as a general protection application was filed according to [R.262.2 RoP](#) right away, also the greyed-out portions of the Statement of defence can be a legitimate part of the present confidentiality request. The Claimant has not in its statement objected the information regarding the Statement of defence.

3.

The order is not appealable per se pursuant to [R. 220.1 VerFO](#). An appeal is therefore only possible together with an appeal against the final decision. To date, no party has applied for authorisation to appeal in accordance with [R. 220.3 VerFO](#). It does not appear necessary to authorise the appeal ex officio. The competence of the judge-rapporteur for the present order in written proceedings follows from [R. 331.1](#) in conjunction with [334](#) and [335 RoP](#).

ORDER

1. The following information relating to the internal organization, the supply chain and sales data of the Gucci group are classified as confidential pursuant to [R. 262A RoP](#):

- a) the statements relating to the internal organization, the supply chain and sales data of the Gucci group highlighted in grey in the Statement of defence;
- b) the Exhibits to the Statement of defence relating to the internal organization, the supply chain and sales data of the Gucci group marked as confidential;
- c) the statements relating to the internal organization, the supply chain and sales data of the Gucci group highlighted in grey in the Rejoinder to the Reply to the Statement of defence, and
- d) the Exhibits to the Rejoinder to the Reply to the Statement of defence relating to the internal organization, the supply chain and sales data of the Gucci group marked as confidential;

2. It is ordered, under the threat of a recurring penalty payment, the amount of which is left to the discretion of the Court, that the parties, their legal representatives, witnesses, experts, other representatives and all other persons who are involved in the present proceedings or who have access to documents relating to such proceedings, must treat the classified information as confidential and must not use or disclose it outside of the present court proceedings unless they have gained knowledge of the classified information outside of the proceedings;

3. It is ordered that the obligation pursuant to item 2. continues to apply after the conclusion or termination of the present proceedings, unless the classified information becomes otherwise known or readily accessible to persons bound by that obligation under item 2., in which case the obligation shall terminate for the person to which and to the extent in which the information becomes otherwise known or readily accessible.

4. Prior to the publication of the reasons for the judgment or other announcements, any information contained therein which relates to the information classified as confidential pursuant to item 1. above shall be redacted.

5. This order replaces the preliminary order issued July 2nd .

ORDER DETAILS

Order no. ORD_39257/2024 in ACTION NUMBER: ACT_561734/2023

UPC number: UPC_CFI_278/2023

Action type: Infringement Action

Related proceeding no. Application No.: 39127/2024

Application Type: APPLICATION_ROP262A

ISSUED IN HAMBURG, AUGUST 9 TH 2024

Judge-rapporteur Dr. Stefan Schilling
